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August 15, 2024

VIA ECOURTS  
Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
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PO Box 970  
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**RECEIVED**

AUG 15 2024  
SUPREME COURT  
OF NEW JERSEY

Re: Horace Cowan v. New Jersey State Parole Board  
Docket No. 089243  
Appellate Division Docket No. A-1131-20T4

On Petition for Certification to the Superior Court, Appellate  
Division

Sat Below:

Hon. Mary Gibbons Whipple, J.A.D.

Hon. Catherine I. Enright, J.A.D.

Letter on Behalf of Respondent New Jersey State Parole  
Board in Opposition to Petition for Certification

Dear Ms. Baker:

Please accept this letter on behalf of Respondent, New Jersey State Parole Board, in opposition to the petition for certification filed by incarcerated person Horace Cowan. The Board relies primarily on its brief and appendix filed in the



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Appellate Division, and adds the following.

Cowan seeks certification of the Appellate Division's January 25, 2024 decision affirming the Board's decision to deny parole and to establish a 200-month future eligibility term ("FET").

A petition for certification of a final decision of the Appellate Division will be granted only for special reasons. R. 2:12-4. Certification will be denied where the Appellate Division's decision is essentially an application of settled principles to the facts of a case, does not present a conflict among judicial decisions requiring clarification or calling for supervision by the Supreme Court, and does not raise issues of general importance. See Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J. concurring); In re Route 280 Contract, 89 N.J. 1, 2 (1982).

Cowan meets none of these requirements. His petition presents no question of general public importance, nor does it conflict with any other decisions of the Court. The Appellate Division recognized that the Board's decision is entitled to deference and applied well-settled legal principles to the factual record developed below.

It is well-settled that the Board has discretionary power to deny parole when, after weighing the mitigating and aggravating factors, it concludes that

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there is a substantial likelihood that the inmate would commit another crime if released on parole. Trantino v. N.J. State Parole Bd. (Trantino VI), 166 N.J. 133, 172 (2001). Here, the Appellate Division found that the Board's decision to deny parole and impose a 200-month FET, which is reduced by the application of commutation, work and minimum custody credits, as within the Board's authority and, in Cowan's case, was supported by sufficient credible evidence in the record. Cowan v. N.J. State Parole Bd., No. A-1130-20 (App. Div. January 25, 2024) (slip. op. at 7). This petition raises no question of general public importance because this appeal relates solely to the Board's individualized assessment of Cowan based on the unique facts in the record. This matter does not present a question similar to a question raised on another appeal, nor does it conflict with other decisions. And an ample record supports the Appellate Division's decision.

Cowan argues that the Court should grant certification to determine whether the Board has correctly applied the law regarding the imposition of "extended" FETs in excess of the presumptive FET under the Board's administrative guidelines. (Pc4-14).<sup>1</sup> He argues that the Board's "frequent"

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<sup>1</sup> "Pc" refers to the petition for certification. "Ra" refers to the appendix to the Board's Appellate Division brief.

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imposition of extended FETs “warrants this Court’s review under the ‘arbitrary, capricious or unreasonable’ standard.” (Pc10). In support of this argument, Cowan cites to numerous unpublished Appellate Division decisions since 2023 involving extended FETs, where the court affirmed three of the FET decisions and vacated/remanded two other FET decisions. (Pc9). However, Cowan’s argument ignores the well-established principle that parole decisions are “highly predictive and individualized discretionary appraisals,” which are “inherently imprecise.” Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222 (2016) (first quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)).

Regarding the FET, when a Board panel denies parole to an inmate serving a sentence for aggravated manslaughter, the presumptive FET is twenty-seven months. N.J.A.C. 10A:71-3.21(a)(1). But under N.J.A.C. 10A:71-3.21(d), a panel may establish an FET outside these guidelines if the presumptive FET is “clearly inappropriate due to the inmate’s lack of satisfactory progress in reducing the likelihood of criminal behavior.” In doing so, the Board shall consider the same non-exhaustive factors enumerated in N.J.A.C. 10A:71-3.11 considered when determining whether the inmate is suitable for parole. Ibid.

In Cowan’s case, the three-member Board panel correctly determined that imposing the presumptive FET would be inappropriate because he had not

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shown satisfactory progress in reducing his likelihood that he would engage in criminal activity if he were to be released on parole. (Ra133-42). Because of this, the three-member Board panel imposed a 200-month FET. Ibid. Importantly, however, the 200-month FET commences on Cowan's parole eligibility date, February 19, 2020 (Ra48), and, because he committed his crime prior to August 19, 1997, is reduced by applicable credits such as commutation, work and minimum custody credits. (Ra142). Based on the application of Cowan's current earned credits, his current eligibility date is September 9, 2031. Ibid. This date will be further reduced by the application of any work credits and minimum custody credits he earns in the future, resulting in a projected eligibility date in June 2030. Ibid. Thus, Cowan's actual FET will be substantially less than 200-months.

Furthermore, and contrary to Cowan's claims (Pc8-9), the three-member Board's panel's reasons for imposing an FET outside the guidelines were thoroughly explained in its narrative notice of decision, which included comments on Cowan's insufficient problem resolution, his lack of insight into his criminal behavior, and his institutional infraction record. (Ra133-42). The Board found that, after twenty-seven years of incarceration, Cowan did not understand the causes of his criminal behavior and the dynamics to his criminal

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thinking. (Ra141-42). Cowan blamed his crimes on his desire to seek acceptance from his peers, but he articulated little or no insight into why he sought to achieve social acceptance though committing crimes, including crimes of violence. Ibid. The Board further found that Cowan had not made sufficient progress in the rehabilitative process. (Ra142). In particular, the Board noted that, notwithstanding his programming and counseling, he required further programming to assist in gaining a better understanding of his criminal thinking and avoid future recidivism. Ibid. Finally, the Board considered Cowan's lengthy disciplinary history that reflected assaultive and disruptive behavior, and incidents involving fighting and narcotics, including the 2018 fighting infraction. Ibid. In this context, contrary to Cowan's arguments, the FET decision was not arbitrary, unreasonable or capricious, and should be affirmed.

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For these reasons, Cowan's petition for certification should be denied.

Respectfully submitted,

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c: Horace Cowan, SBI#338754B (Via regular mail)